

IT 95-55

Tax Type: INCOME TAX

Issue: Withholding Tax - Failure To File Return/Make Payment
1005 Penalty (Reasonable Cause Issue)

STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
CHICAGO, ILLINOIS

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DEPARTMENT OF REVENUE      )  
STATE OF ILLINOIS         )  
                           )  
        v.                 )   Docket:  
                           )  
XXXXXX                    )   James P. Pieczonka  
                           )   Administrative Law Judge  
        Taxpayer(s)       )  
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RECOMMENDATION FOR DISPOSITION

APPEARANCES: James P. Pieczonka, Administrative Law Judge, presided at a hearing of the above matter. Department staff attorney, Colin Relphorde, represented the Department and introduced the Department's prima facie case. XXXXX (hereinafter referred to as XXXXX) appeared as a witness.

SYNOPSIS: The instant case arose from a non-field IL-941 audit of XXXXX due to the failure of the business to file IL-941 returns and remit withheld taxes of its employees to the Department during the four quarters in 1990 pursuant to 35 ILCS 5/704 and 5/705. Also, penalties were imposed under 35 ILCS 5/1001 and 5/1005. It was determined that Illinois 941 returns were not filed for the quarters in question and the business did not remit the taxes due to the Department. Therefore, a Notice of Deficiency was issued to XXXXX pursuant to Sections 704 and 705 of the Act in the amount of \$3,568.00.

After Protest and hearing, the Administrative Law Judge recommends that the Notice of Deficiency be upheld in part based upon a recomputation of the taxes due from XXXXX.

The issues presented for review are:

1. Whether Taxpayer failed to withhold, file returns and pay over to the Department, Illinois withheld income taxes from compensation paid to its employees as required by Sections 701, 704 and 705 of the Act for the four quarters in 1990?

2. Whether Taxpayer failed to file IL-941 tax returns as required, and that such failure has not been shown to be due to reasonable cause under Section 1001?

3. Whether Taxpayer is liable for Section 1005 penalties for the quarters in question?

FINDINGS OF FACT:

1. The Department completed an IL-941 non-field audit of XXXXX, an Illinois corporation engaged in business as a general retail store. It was determined that XXXXX did not file IL-941 returns for the quarters in question or remit withheld taxes from compensation paid to its employees. (Dept. Ex. No. 3,7) Additionally, a Section 1001 penalty for failure to file IL-941 returns was proposed. Also, Section 1005 penalties were proposed. (Dept. Ex. No. 3).

2. XXXXX and XXXXX were co-owners of the business. (Tr.p. 13)

3. On February 1, 1994 a Notice of Deficiency was issued to XXXXX for the quarters in question in the total amount of \$3,568.00.

4. On March 26, 1994, XXXXX filed a timely Protest to the Notice of Deficiency and requested a hearing. The Protest stated that the business was failing in 1990, therefore, the Notice of Deficiency was incorrect and excessive. (Dept. Ex. No. 4)

5. On October 18, 1994, a hearing was held in Chicago before Administrative Law Judge, James P. Pieczonka. At the hearing Department attorney, Colin Relphorde, introduced Department of Revenue Exhibits 1-7 as the Department's prima facie case and they were admitted into the record. XXXXX appeared as an owner of XXXXX to rebut the Department's case. (Tr. pp. 1-17, Taxpayer Ex.'s 1,2)

6. At the hearing taxpayer submitted copies of XXXXX's federal 941

returns and evidence of a \$93.00 tax credit for the quarters in question.
(Taxpayer Ex. No.'s 1,2)

7. The federal 941 returns and supporting documentation submitted by XXXXX were reviewed and considered by the Department in a re-audit of the account.

CONCLUSIONS OF LAW: A taxpayer's obligation for withholding taxes is governed by 35 ILCS 5/701 through 5/713. Employers that maintain an office or transact business in the State of Illinois may be liable for the withholding of Illinois income taxes if they pay compensation to residents of Illinois or to non-residents if all or part of the compensation is paid in Illinois as defined by 35 ILCS 304(a)(2)(B).

Once an employer meets those standards it is required to file withholding tax returns and remit withheld taxes to the Department of Revenue in accordance with 35 ILCS 5/704 and 5/705.

Additionally, Regulation Section 100.7300 provides that "... every employer required to deduct and withhold tax on compensation paid in Illinois shall make a return for the first calendar quarter in which such tax is deducted and withheld for each subsequent calendar quarter (whether or not compensation is paid therein) until a final return is filed. Form IL-941, Employer's Quarterly Illinois Withholding Tax Return, is prescribed for making the return required under this paragraph...".

The Notice of Deficiency issued in this case is prima facie correct so long as its proposed assessment meets some minimum standard of reasonableness, *Vitale v. The Illinois Department of Revenue*, 118 Ill. App. 3d 210, 454 N.E. 2d 799, 73 Ill. Dec. 702 (1983). In order to overcome the prima facie correctness, the Taxpayer has the burden of presenting competent evidence that the proposed adjustments are incorrect, *Masini v. Department of Revenue*, 60 Ill. App. 3d 11, 376 N.E. 2d 324 (1978).

In the instant case, XXXXX contested the correctness of the Notice of Deficiency for the quarters in question and produced federal documentation

as to his federal withholding liabilities. Although XXXXX admitted that it did not file IL-941 returns for the quarters in question or remit the taxes due, it produced credible testimony as to the failure of the business during the quarters in question and sufficient documentation to show that the Department's returns were overstated. Consequently, the Department's Technical Review Division re-audited XXXXX's accounts and reduced the amount of taxes due and penalties thereon.

The Administrative Law Judge finds that XXXXX did not file IL-941 returns or remit withheld taxes for the quarters in question. However, XXXXX offered sufficient evidence to rebut the Department's returns in part. Consequently, the Notice of Deficiency must be upheld as recalculated by Technical Review in the amount of \$666.00 in tax and \$529.00 in penalties.

RECOMMENDATION: The Administrative Law Judge recommends that the Director of Revenue uphold the deficiency in part based upon the re-audit amounts.

James P. Pieczonka
Administrative Law Judge

Date